

U.S. DISTRICT COURT
DISTRICT OF VERMONT
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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

CLERK
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ELEMENT 3 INC.,
WEST BRANCH GALLERY,
Plaintiff

v.

THE CINCINNATI INSURANCE
COMPANY,
Defendant

) Removed From
) Vermont Superior Court
) Lamoille Unit, Civil Division
) Docket No.: 21-cv-01164
)
)
) Civil Action No. 2:21-cv-152

NOTICE OF REMOVAL

PLEASE TAKE NOTICE, that the defendant, the Cincinnati insurance Company, by and through its attorneys, Ryan, Smith & Carbine, Ltd., pursuant to 28 U.S.C. §§1441 and 1446, hereby removes the action of Element 3 Inc., D/B/A West Branch Gallery v. The Cincinnati Insurance Company, state court docket number 21-cv-01164, from the Superior Court of the State of Vermont, Lamoille County, to the United States District Court for the District of Vermont.

1. This action is for money damages. According to the Summons and Complaint, the plaintiff contends that the defendant is liable to plaintiff for "consumer fraud," "bad faith failure to pay first party claim by insured," and "breach of contract." A copy of the Summons and Complaint and all attachments to it, and all other documents served to date on the defendant by plaintiff, are attached as Exhibit "A."

2. The defendant was served with the Summons and Complaint on May 27, 2021.

3. This court has jurisdiction over the removed case. Pursuant to 28 U.S.C. §1332, the District Court shall have original jurisdiction over all actions where the matter in

controversy exceeds the sum of \$75,000.00, exclusive of interest and costs, and is between the citizens of different states. See, 28 U.S.C. §1332(a)(1).

4. There is complete diversity of citizenship between the parties.

5. The Complaint in the above-referenced matter provides that the plaintiff was a Vermont corporation with its principal place of business in Vermont. See Exhibit A, ¶ 1.

6. The Cincinnati Insurance Company is a citizen of Ohio because it is organized under the laws of Ohio and has its principal place of business in Fairfield, Ohio.

7. The monetary amount in controversy is unspecified in the Complaint. The Complaint sets out five Counts including allegations of “consumer fraud”, “bad faith failure to pay first party claim by insured,” and “breach of contract.” Plaintiff demands compensatory damages; attorney’s fees and costs; consequential damages; punitive damages; and pre-judgment interest. There is a “reasonable probability” that the amount in controversy requirement is satisfied. *Pyskaty v. Wide World of Cars, LLC*, 856 F.3d 216,223 (2d Cir. 2017). It is anticipated that the amount in controversy exceeds the statutory requirement of seventy-five thousand dollars.

8. This Notice of Removal is timely filed within thirty (30) days after the Summons and Complaint was first served on the defendant, as required by 28 U.S.C. §1446(b). The time period for removal begins running upon perfected service of process. *Northern Security Ins. v. Mitec Telecom, Inc.*, 3 F. Supp. 2d 483, 484 (D. Vt. 1998); *Alling v. C.D. Cairns Irrevocable Trusts Partnership*, 889 F. Supp. 768, 770 (D. Vt. 1995).

9. The requested venue to which removal is requested is proper. The United States District Court for the District of Vermont is the appropriate Court to which this action

should be removed because the district embraced actions filed in the Superior Court of the State of Vermont, Lamoille County.

10. Pursuant to 28 U.S.C. § 1446(d), copies of this notice of removal are being filed with the clerk of Superior Court of Lamoille County, Vermont and served on plaintiff's counsel.

11. All state court papers previously served on defendant in the above-captioned state court action are filed with this Notice of Removal as Exhibit A.

WHEREFORE, notice is hereby given that defendant, the Cincinnati Insurance Company, removes this action to the United States District Court for the District of Vermont pursuant to U.S.C. §§1441 and 1446.

DATED: June 3, 2021

RYAN SMITH & CARBINE, LTD.

By: 

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